

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

Eastern District of Kentucky
FILED

MAR 17 2010

AT LEXINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 7-96-CV-414
)	
ESTATE OF CLYDE CASSADY,)	
RICHARD M. YOUNG, EXECUTOR,)	
et al.,)	
)	
Defendants.)	

ORDER OF SALE

Upon consideration of the United States' Motion for an Order of Sale, and the
Court finding that good cause exists for the granting of this motion,

It Is ORDERED:

1. The United States' motion is GRANTED;
2. The Court further ORDERS that whereas, the relief described herein has been demanded in the complaint and has been agreed to by all parties on May 1, 2000, the United States' federal tax lien against defendant Estate of Clyde Cassady, Richard M. Young, Executor, is foreclosed against the subject property described below (collectively, the "Real Property"), and such property is to be sold pursuant to 28 U.S.C. § 2001 in the manner set forth below.
3. The Real Property to be foreclosed is located in Martin County, Kentucky and is described as follows:

Being the same property conveyed to Richard M. Young, Trustee of the Young Family Trust by Deed dated December 16, 1982 and recorded in Book 91 on page 693 records of Martin County Clerk's Office: The following tracts of land lying in Martin County, described by the following:

[Property 1]

Beginning on Main Street on the corner of Dixie Porter's lot, thence up the hill to A. D. Speer's line thence up the creek with his line to Lewis Dempsey's corner, thence down the hill with his line to the street, thence down with the street to the beginning.

[Property 2]

Beginning at the upper corner of the lot owned by grantee herein on Main Street and running up the street 23 feet to a post, thence running up the hill to the back line of Lewis Deapsey's lot to a post about 15-1/2 feet from the back corner of grantee's lot, thence running toward the street with the present line of grantees lot to the street to the beginning.

[Property 3]

Beginning on the edge of the street on a conditional line between L.C. Richmond and J. M. Ward, thence down with this street 131-1/2 feet to Eli Crum's line and thence with his line up the hill to Nathaniel Ward's heirs line, thence up the creek with said line to J.M. Ward's line, thence down the hill with his line to the street to the beginning.

[Property 4]

Beginning at or about a beech stump at the Marion Hale Lodge #672 line, then running up the hill in a straight line to the line of Allie Ward, thence turning right and running in a straight line a distance of 50 feet with the Allie Ward line to Curtis Crum line, marked by a black walnut tree, thence following the said line of Curtis Crum running down the hill to the line of Clyde Cassady, thence turning right running with Clyde Cassady line to the Bill Stepp line and again with Clyde Cassady line then with Marion Hale Lodge #672 line to the beginning a distance of 380 feet containing 3 acres more or less.

[Property 5]

TRACT I

Lying, and being in Martin County, Kentucky, and in the head of the right hand fork of the Collins Branch, a tributary of the Coldwater fork of Rockcastle Creek, bounded as follows, To-Wit:

Beginning at a rock on top of the hill at the head of the hollow on the line of a survey patented to W. M. Stepp and with the line of said survey, N. 83 E. 50 poles to a locust and dogwood near a gap at the head of said branch, N. 23 E. 42 poles to a white oak on top of the ridge near a gap and with the top of the ridge, S. 63 E. 25 poles to a white oak and a hickory on a knob, S. 12 W. 16 poles to a hickory, thence passing through a gap, S. 64 W. 68 poles to a red oak, S. 70 W. 15 poles to a hickory on a knob, N. 42 W. 14 poles to a black oak and hickory, N. 78 W. 4 poles to the beginning.

Registered May 28, 1897, and patented by the Commonwealth of Kentucky to Richard F. Cassady on the 30th day of August 1897, Book 118, page 342, No. 65940. Tract #2 Also one other tract: Beginning at a large beech standing on the north side of the left fork of Collins Branch, corner to lot No. 3 and corner to Sleepy John Stepp, thence down the branch with the County road, S. 53- $\frac{1}{2}$ W. 9 poles 16 links to a stake, S. 71- $\frac{1}{2}$ W. 12 poles to a stake near a beech previously marked, N. 67 W. 12 to a black walnut, N. 83 W. 30 poles to a rock by the branch, thence leaving the branch, S. 19 W. 45 poles to a sugar tree in the gap in the head of the hollow at J. E. Cassady's house, thence out with the top of the ridge between Collins Branch and J. E. Cassady's Branch, S. 67- $\frac{1}{2}$ E. 14 poles to a black oak, S. 14 E. 11 poles to a small black oak, S. 23 E. 8 poles to a hickory, S. 76 E. 11 poles to a large white oak on the ridge, S. 57- $\frac{1}{2}$ E. 21 poles to a small black oak, S. 18 W. 36 poles to a hickory, S. 14 E. 27 poles to 2 small hickories, S. 42 E. 14 poles and 5 links to a Chestnut oak, S. 32 E. 17 poles to 2 pines on a knob, S. 64 E. 35 poles to a chestnut oak in a gap, S. 17- $\frac{1}{2}$ E. 22 poles to 2 hickories, S. 11 E. 22 poles to 2 black oaks, S. 22- $\frac{1}{2}$ W. 5 and 7 links to a black oak on knob, S. 72 E. 68 poles to a hickory passing through a gap, N. 12 E. 16 poles to a hickory, thence running the ridge between right and left forks of Collins Branch, N. 63 W. 58 poles to 2 small chestnuts, N. 28- $\frac{1}{2}$ W. 33 poles to a chestnut and sourwood, N. 65- $\frac{1}{2}$ W. 14 poles to a gum and hickory, N. 22 W. 7 poles to a chestnut on a knob, N. 10 W. 51 poles to a chestnut oak by 2 rocks, N. 42 W. 10 poles to a hickory, N 5. W. 16 poles to a hickory and black oak, thence down the

point, 72 W. 27 poles to a chestnut oak and pine on a point, S. 71 W. 18 poles to a poplar and rock, N. 54 W. 44 poles to the beginning containing 195 acres.

This conveyance is subject to the following reservations and exceptions there is reserved from and excepted out of this conveyance, all minerals and mineral rights, including the coal, oil and gas, and all other minerals, whether named herein or not, together with all customary, necessary and convenient rights in, over and under the surface, to recover, take therefrom and explore for said minerals.

There is further reserved from and excepted out of this conveyance the free gas rights and privileges, provided for in the oil and gas lease now existing on the premises, for the use and benefit of the grantors herein, said free gas to be used by the grantors, their heirs and assigns, away from the premises, herein conveyed.

TRACT II

A parcel of land containing eight acres, by survey, bearing date the 15th day of December, one thousand eight hundred and ninety six, lying and being in the County of Martin and in the head of the right hand fork of the Collins branch, a tributary of the Coldwater fork of the Rockcastle Creek and bounded as follows to wit:

Beginning at a rock on top of the hill at the head of the line of said survey N. 83 E. 50 poles to a Locust and Dogwood near a gap at the head of said branch; N. 23 E. 48 poles to a white oak on top of the ridge near a gap and with the top of the ridge S. 63 E. 25 poles to a white Oak and Hickory on a knob; S. 12 W. 16 poles to a Hickory; then passing through a gap S. 64 W. 68 poles to a red Oak; S. 70 W. 15 poles to a Hickory on knob; N. 42 W. 14 poles to a black Oak and Hickory; N. 78 W. 4 poles to the beginning.

Being the same property conveyed to Richard M. Young, Trustee of the Young Family Trust by Deed recorded in Book 91 on page 695 in the Records of the Martin County Court Clerk.

[Property 6]

A tract of land situated in Martin County, Kentucky, on Tug River, a tributary of Big Sandy River and bounded and described by the

following:

Beginning on a buckeye on the river bank, then down the hill to the river, thence up the hill so as to make said land two (2) acres wide to the top of the hill, thence down the ridge to a rock corner of the James G. Ward land and with said line to the beginning containing ten (10) acres be the same (sic) more or less.

[Property 7]

Being the same property conveyed to Richard M. Young, Trustee of the Young Family Trust by Deed dated November 30, 1982 and recorded in Book 91 on page 700 Martin County Court Clerk's Record.

[Property 8]

A one-half undivided interest in real property, described as that certain property in Martin County, Kentucky, and more particularly described as follows:

A certain tract or parcel of real property containing approximately seventy (70) acres on the Williamson Branch, a tributary of Rockhouse Fork of Rockcastle Creek, and generally described as being bounded on the North by W. Sester and H. Spence; on the East by C. M. Cooper; on the South by the Preston Heirs and C. W. Porter Heirs; and on the West by C.W. Porter Heirs and R. Fitzpatrick.

Being the same property conveyed to Richard N. Young, Trustee of the Young Family Trust by Deed dated February 3rd, 1984 and recorded in Book 94 on page 431 Records of Martin County Court Clerk.

4. The United States Marshal for the Eastern District of Kentucky or his/her representative, or an Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS"), is authorized under 28 U.S.C. §§ 2001 and 2002 to offer for sale at public auction, and to sell the subject Real Property to satisfy the United States' federal tax lien against such Real Property;¹

¹The United States shall make the arrangements for the United States Marshal's Office or the PALS to sell the Real Property as set forth in this order. The United States

5. The Marshal, his or her representative, or the PALS is authorized to have free access to the Real Property and to take all actions necessary to preserve the Real Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the property, until the deed to the Real Property is delivered to the ultimate purchaser;
 - a. The sale of the Real Property shall be free and clear of the interests of any of the defendants to this action;
 - b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Real Property, and any easements and restrictions of record, if any;
 - c. The Real Property shall be sold by public auction to take place within Martin County, Kentucky, either on the premises themselves or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002;
 - d. The times and places for the sales of the Real Property are to be announced by the United States Marshal, his or her representatives, or the PALS;
 - e. The sale of the Real Property shall be advertised once each week for four

may choose either the United States Marshal or the PALS to carry out the sales under this order.

(4) consecutive weeks preceding the time fixed for such sale in a daily newspaper of general circulation in Martin County, Kentucky, and by any other notice that the United States Marshal or his/her representative, or the PALS in his/her discretion may deem appropriate. The notices of sale shall contain a description of the property to be sold and shall contain the terms and conditions of sale in this order and decree;

- f. The Real Property shall be sold to the highest bidder with the United States having the right to withdraw the Real Property from bidding at any time prior to the acceptance of a bid, if in the opinion of the United States, the bids are inadequate;
- g. If there are any municipal liens (including county and city property taxes and utility liens) on the Real Property, the United States shall obtain from the municipality a bill, statement or claim for any delinquent amounts secured by such liens and deliver same to the United States Marshal or the PALS ten days in advance of said sale. Satisfaction of any municipal liens shall be from the sale proceeds pertaining to the property subject to such liens, and the Real Property shall be sold free and clear of such municipal liens;
- h. No bid on any of the Real Property (except as to the United States) shall be accepted unless the same is accompanied by a certified check or a cash deposit of at least ten percent (10%) of the amount of the bid payable to

the United States District Court for the Eastern District of Kentucky.

Before being permitted to bid at the sale, bidders shall display to the United States Marshal, his/her representative, or to the PALS proof that they are able to comply with this requirement. No bids will be received from any person who has not presented proof that, if he or she is the successful bidder, he or she can make the deposit required by this order;

- i. The balance of the purchase price on the Real Property shall be paid to the United States Marshal or the PALS (whichever person is conducting the sale as arranged by counsel for the United States) within sixty (60) days after the date the bid is accepted. Payment shall be by a certified or cashier's check payable to the United States District Court for the Eastern District of Kentucky. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be returned to the bidder, and the Real Property shall be again offered for sale under the terms and conditions of this order and decree.
- j. The sale of the Real Property shall be subject to confirmation by this Court. On confirmation of the sale, the United States Marshal or the PALS shall execute and deliver a deed of judicial sale conveying the Real Property to the purchaser(s). On confirmation of the sale, all interests in, liens against, or claims to, the Real Property that are held or asserted by

the United States or the defendants in this action are discharged and extinguished.

- k. No later than twenty (20) days after receipt of the balance of the purchase price, the United States Marshal or the PALS shall file a report of sale with the Court, together with a proposed order of confirmation of sale and proposed deed.
- l. The recorder of deeds of Martin County, Kentucky, shall proceed to record the deed in favor of the purchaser(s).
- m. Until the Real Property is sold, any person occupying the Real Property shall take all reasonable steps necessary to preserve the Real Property (including all improvements, fixtures and appurtenances) in their current condition including, without limitation, maintaining fire and casualty insurance on the Real Property at his own expense. No person occupying the Real Property shall commit waste against the Real Property, nor shall they cause or permit anyone else to do so. They shall not do anything that tends to reduce the value or marketability of the Real Property, nor shall they cause or permit anyone else to do so. They shall take no action which may tend to deter or discourage potential bidders from participating in the public auction.
- n. If the United States Marshal, or his or her representative, conducts the sale, the proceeds from the sale(s) of the Real Property shall be distributed

in the following order:

- i. First, to the United States Marshal for the costs of the sales;
- ii. Second, the United States, on account of its federal tax lien;
- iii. Third, to the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways; the First National Bank of Paintsville; and ORIX Leasing Service Corporation.
- iv. Priority as between parties other than the United States shall be determined as of the date of the filing of such liens, with the earlier filed having priority.
- iv. Fifth, any surplus of the sale proceeds from the Real Property shall be deposited with the Clerk to be held until further order of the Court;
- o. If the PALS conducts the sale of the Real Property, the proceeds from the sale shall be distributed in the following order:
 - i. First, to the PALS for the costs of the sales;
 - ii. Second, the United States, on account of its federal tax lien;
 - ii. Third, to the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways; the First National Bank of Paintsville; and ORIX Leasing Service Corporation.
 - iii. Priority as between parties other than the United States shall be determined as of the date of the filing of such liens, with the earlier

filed having priority.

- iv. Fifth, any surplus of the sale proceeds from the Real Property shall be deposited with the Clerk to be held until further order of the Court.

Signed this 16th day of March, 2010.

Joseph M. Hood
UNITED STATES DISTRICT JUDGE